

NetChoice Promoting Convenience, Choice, and Commerce on The Net

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Senator Edward J. Kasemeyer, Chair
Senate Budget and Taxation Committee
General Assembly of Maryland
Annapolis, Maryland

March 8, 2017

RE: Opposition to SB 855 – Main Street Fairness Act of 2017

Dear Chairman Kasemeyer and members of the committee:

We ask that you do not pass SB 855 and avoid making the same mistakes as South Dakota.

SB 855 will be seen by Marylander consumers as a new tax and could erode your ability to protect Maryland businesses from out-of-state tax collectors.

First, consider problems created by SB 855's anticipated legal challenges:

- Will not go into effect for several years, if ever
- Will cost Maryland taxpayers in attorney's fees and court costs
- May be rendered irrelevant by other state lawsuits or Congressional action

Second, if the SB 855 survives court challenges, it would:

- Reduce the ability of Maryland to protect its businesses from burdens imposed by other states
- Rely on new revenue extracted from Maryland residents – not from out-of-state businesses
- Would generate only minimal new tax revenue
- Establish a new tax regime that is anything but equal, consistent, or fair

Likely seen as a new tax by your constituents

Maryland residents will likely see this as a new tax since any tax collected will come from the pockets of Maryland citizens, not from out-of-state businesses.

We recently polled Tennessee residents on a similar tax in that state, and 56% said requiring them to pay tax on online purchases from out-of-state businesses would be a statewide tax increase. We would likely see similar results in a poll of Maryland citizens. (see Tennessee poll at NetChoice.org/TNTaxPoll)

SB 855 is likely to bring burdens on Maryland businesses from other states

Just by proposing SB 855, Maryland created a dangerous precedent for other state revenue departments to follow. While SB 855 would apply only to remote sellers, it encourages other states to create similar laws that would impact Maryland sellers.

No revenue would be generated from SB 855 for several years, if ever. And SB 855 fritters away tax dollars on an unnecessary lawsuit

SB 855 will generate no revenue for the state unless and until the US Supreme Court overturns a century of established federal doctrine.

Following enactment of the law, groups like NetChoice and ACMA intend to seek an injunction and challenge the law. Immediate injunction of SB 855 is likely, since even the state of South Dakota¹ stipulated that its similar “Kill Quill” law was unconstitutional.

On March 6, 2017, the State Circuit Court in South Dakota granted a motion for Summary Judgment against the state’s 2016 law, finding:

“Because each of the Defendants lacks a physical presence in South Dakota... the State acknowledges that under *Quill Corp. v. North Dakota*, the State of South Dakota is prohibited from imposing sales tax collection and remittance obligations on the Defendants.”

“The State further admits that this Court is required to grant summary judgment in Defendants’ favor, because of the *Quill* ruling.”

“This Court is duty bound to follow applicable precedent of the United States Supreme Court.”

“This is true even when changing times and events clearly suggest a different outcome; it is simply not the role of a state circuit court to disregard a ruling from the United States Supreme Court.”

If a similar injunction is obtained in Maryland, the state could not enforce SB 855. If the US Supreme Court chooses not to hear the state’s appeals of this case, the existing *Quill* standard would remain in effect and SB 855 could not be enforced at any time.

It is likely that the US Supreme Court will have already decided on the *Quill* question even before the SB 855 makes its way through the courts. As noted above, courts are now reviewing the legality of a similar law in South Dakota² and regulation in Alabama.³ SB 855 acts as a pile-on with no material benefit to Maryland -- while incurring litigation costs for the state.

Passage of SB 855 would erode state sovereignty

Advocates for SB 855 claim that the purpose of this bill is to overturn the current *Quill* standard⁴ of physical presence. Today, the *Quill* standard stops tax collectors in California, New York, or Illinois from harassing Maryland businesses that have no physical presence in those states.

But passage of SB 855 would remove the protections of *Quill* and reduce the ability of Maryland to protect its businesses from tax collectors across the country, forcing Maryland businesses to travel across the country to defend themselves in foreign state courts.

State tax collectors would be the true “winners” if SB 855 succeeds in overturning the *Quill* standard. Maryland citizens and Maryland businesses would be the losers.

¹ See *South Dakota v. Wayfair Inc. et al*, Case No. 3:2016cv03019 (S.D. Dist. Ct. May 15, 2016).

² See Sandra Guy, *South Dakota sues four big online retailers over sales taxes*, Internet Retailer (April 29, 2016).

³ See Chris Morran, *Newegg Challenges Alabama Over Collection Of Online Sales Tax*, Consumerist (June 14, 2016)

⁴ *Quill Corp. v. Maryland*, 504 U.S. 298 (1992) further confirmed the physical presence standard for sales tax collection. It protected Quill, a Delaware corporation with offices and warehouses in Illinois, California, and Georgia, from Maryland tax collectors and Maryland tax rules – a state where Quill had no physical presence.

No new money would come into Maryland

Even if SB 855 survived a Supreme Court challenge, *no new money would flow into Maryland*. Any sales taxes collected as the result of SB 855 would come from the pockets of Maryland residents -- not from out-of- state businesses.

Minimal tax revenue would be generated from SB 855

Today, most of the top e-retailers already collect for Maryland. That includes Amazon, who accounted for 41% of online sales in Q1 2016.⁵

Some SB 855 advocates cite a 2009 University of Tennessee⁶ study to suggest a large windfall of uncollected sales taxes. However, the UT study is far out-of-date and fails to account for existing tax collection by Amazon and several other large e-retailers.

The question, assuming SB 855 survives in court, is whether the minimal tax revenue extracted from Maryland citizens is enough to justify the legal costs, executive branch overreach, and erosion of state sovereignty?

SB 855 creates a new tax that is not equal, consistent, or fair

Tax advocates justify SB 855 by saying it “creates a level playing field for all sellers.” However, SB 855 foists disproportionate collection burdens on catalog and online retailers. When a customer enters a gift shop in Annapolis, the store does not ask for that customer’s home address so she can look-up the tax rate and later remit the tax to the customer’s home state.

But SB 855 would impose the burden of look-up, tax filing, and audit -- if the sale occurs through a phone call, mail order, or the internet. We fail to see how that would be equal, consistent, or fair.

We ask that you reject SB 855 and protect Maryland businesses from out-of-state tax auditors, protect Maryland citizens from a new tax, and avoid costly litigation the state is likely to lose.

Thank you for considering our views and please let us know if we can provide further information.

Sincerely,



Carl Szabo
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⁵ Ken Kam, *The Market Is Underestimating Amazon*, Forbes (May 27, 2016).

⁶ Bruce, Fox, and Luna, *State and Local Government Sales Tax Revenue Losses from Electronic Commerce*, University of Tennessee (2009).